

## § 107.830

the securities of a Small Business through or from an underwriter if:

(1) You purchase such securities within 90 days of the date the public offering is first made;

(2) Your purchase price is no more than the original public offering price; and

(3) The amount paid by you for the securities (less ordinary and reasonable underwriting charges and commissions) has been, or will be, paid to the Small Business, and the underwriter certifies in writing that this requirement has been met.

(b) *Recordkeeping requirements.* If you have outstanding Leverage or plan to obtain Leverage, you must keep records available for SBA's inspection which show the relevant details of the transaction, including, but not limited to, date, price, commissions, and the underwriter's certifications required under paragraph (c) of this section.

(c) *Underwriter's requirements.* If you have outstanding Leverage or plan to obtain Leverage, the underwriter must certify whether it is your Associate. You may pay reasonable and customary commissions and expenses to an Associate underwriter for the portion of an offering that you purchase, provided it is no more than 25 percent of the total offering. If you buy more than 25 percent of the offering, the amount you pay to the Associate underwriter must not exceed the total of the application and closing fees and reimbursable expenses permitted by § 107.860.

(d) *Securities purchased from another Licensee or from SBA.* You may purchase from, or exchange with, another Licensee, Portfolio securities (or any interest therein). Such purchase or exchange may only be made on a non-recourse basis. You may not have more than one-third of your total assets (valued at cost) invested in such securities. If you have previously sold Portfolio Securities (or any interest therein) on a recourse basis, you shall include the amount for which you may be contingently liable in your overline computation.

(e) *Purchases of securities from other non-issuers.* You may purchase securities of a Small Business from a non-

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issuer not previously described in this § 107.825 if:

(1) Such acquisition is a reasonably necessary part of the overall sound Financing of the Small Business under the Act; or

(2) The securities are acquired to finance a change of ownership under § 107.750.

### STRUCTURING LICENSEE'S FINANCING OF AN ELIGIBLE SMALL BUSINESS: TERMS AND CONDITIONS OF FINANCING

#### § 107.830 Minimum duration/term of financing.

(a) *General rule for Section 301(c) Licensees.* If you are a Section 301(c) Licensee, the duration/term of all your Financings must be for a minimum period of five years. *Exception:* You may finance a Disadvantaged Business for a minimum term of four years.

(b) *General rule for Section 301(d) Licensees.* The duration/term of your Financings may be for a minimum period of four years.

(c) *Restrictions on mandatory redemption of Equity Securities.* If you have acquired Equity Securities, options or warrants on terms that include redemption by the Small Business, you must not require redemption by the Small Business within the first five years of your acquisition except as permitted in § 107.850.

(d) *Special rules for Loans and Debt Securities.* (1) *Term.* The minimum term for Loans and Debt Securities starts with the first disbursement of the Financing.

(2) *Prepayment before five years.* You must permit voluntary prepayment of Loans and Debt Securities by the Small Business at any time during the initial five year term. You must obtain SBA's prior written approval of any restrictions on the ability of the Small Business to prepay other than the imposition of a reasonable prepayment penalty under paragraph (d)(3) of this section.

(3) *Prepayment penalties.* You may charge a reasonable prepayment penalty which must be agreed upon at the time of the Financing. If SBA determines that a prepayment penalty is unreasonable, you must refund the entire

penalty to the Small Business. A prepayment penalty equal to 5 percent of the outstanding balance during the first year of any Financing, declining by one percentage point per year through the fifth year, is considered reasonable.

**§ 107.835 Exceptions to minimum duration/term of Financing.**

You may make a Short-term Financing for a term less than five years if the Financing is:

- (a) An interim financing (for a period not to exceed one year) in contemplation of long-term Financing. The contemplated long-term Financing must be in an amount at least equal to the short-term Financing, and must be made by you alone or in participation with other investors; or
- (b) For protection of your prior investment(s); or
- (c) For the purpose of Financing a change of ownership under § 107.750. The total amount of such Financings may not exceed 20 percent of your Loans and Investments (at cost) at the end of any fiscal year; or
- (d) For the purpose of aiding a Small Business in performing a contract awarded under a Federal, State, or local government set-aside program for "minority" or "disadvantaged" contractors.

**§ 107.840 Maximum term of Financing.**

The maximum term of any Loan or Debt Security Financing must be no longer than 20 years.

**§ 107.845 Maximum rate of amortization on Loans and Debt Securities.**

The principal of any Loan (or the loan portion of a Debt Security) with a term of five years or less cannot be amortized faster than straight line. If the term is greater than five years, the principal cannot be amortized faster than straight line for the first five years.

**§ 107.850 Restrictions on redemption of Equity Securities.**

- (a) A Portfolio Concern cannot be required to redeem Equity Securities earlier than five years from the date of the first closing unless:

- (1) The concern makes a public offering, or has a change of management or control, or files for protection under the provisions of the Bankruptcy Code, or materially breaches your Financing agreement; or

- (2) You make a follow-on investment, in which case the new securities may be redeemed in less than five years, but no earlier than the redemption date associated with your earliest Financing of the concern.

- (b) The redemption price must be either:

- (1) A fixed amount that is no higher than the price you paid for the securities; or

- (2) An amount that cannot be fixed or determined before the time of redemption. In this case, the redemption price must be based on:

- (i) A reasonable formula that reflects the performance of the concern (such as one based on earnings or book value); or

- (ii) The fair market value of the concern at the time of redemption, as determined by a professional appraisal performed under an agreement acceptable to both parties.

- (c) Any method for determining the redemption price must be agreed upon no later than the date of the first (or only) closing of the Financing.

**§ 107.855 Interest rate ceiling and limitations on fees charged to Small Businesses ("Cost of Money").**

"Cost of Money" means the interest and other consideration that you receive from a Small Business. Subject to lower ceilings prescribed by local law, the Cost of Money to the Small Business must not exceed the ceiling determined under this section.

- (a) *Financings to which the Cost of Money rules apply.* This section applies to all Loans and Debt Securities. As required by § 107.800(b), you must include as Debt Securities any equity interests with redemption provisions that do not meet the restrictions in § 107.850.

- (b) *When to determine the Cost of Money ceiling for a Financing.* You may determine your Cost of Money ceiling for a particular Financing as of the date you issue a Commitment or as of the date of the first closing of the Financing. Once determined, the Cost of